

**COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. 03-MSRC-002**

**COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF MINES AND MINERALS**

**COMPLAINANT**

**v.**

**FRANK G. HEAD, JASON OWEN,  
NICHOLAS DAY, et al.**

**RESPONDENTS**

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**FINAL ORDER REGARDING  
RESPONDENT NICHOLAS DAY**

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This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Nicholas Day, and the members of the Commission having reviewed the Settlement Agreement filed on April 4, 2003 in the matter herein, and the Commissioners being sufficiently advised,

**IT IS HEREBY ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, Nicholas Day's Coal Miner's Certificate, # \*\*\*-\*\*-\*\*\*\*, issued by the Commonwealth of Kentucky, shall be placed on probation for a period of ten (10) days, effective April 3, 2003;
3. During said probationary period, if Respondent Day commits any intentional violation of state or federal mine safety laws, or orders anyone to violate state or federal mine safety laws, the KDMM may file a motion with the Mine Safety Review Commission to revoke certificate # \*\*\*-\*\*-\*\*\*\*;

4. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Day, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13); and

6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Nicholas Day, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this \_\_\_\_\_ day of May 2003.

BAYARD V. COLLIER, CHAIR  
MINE SAFETY REVIEW COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING RESPONDENT NICHOLAS DAY was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this \_\_\_\_\_ day of May 2003:

NICHOLAS DAY

\*\*\*\*\*

CLAY KY \*\*\*\*\*

And by regular mail, postage pre-paid to:

FRANK G. HEAD

\*\*\*\*\*

HENDERSON KY \*\*\*\*\*

JASON OWEN

\*\*\*\*\*

\*\*\*\*\*

CAVE IN ROCK IL \*\*\*\*\*

And by messenger mail to:

COMMISSIONER FRANK DELZER  
DEPT. OF MINES & MINERALS  
1025 CAPITAL CENTER DRIVE  
FRANKFORT KY 40601

HON. TONY OPPEGARD  
GENERAL COUNSEL  
DEPT. OF MINES & MINERALS  
1025 CAPITAL CENTER DRIVE  
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
FRANKFORT KY 40601

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DIANE SCHULER FLEMING  
GENERAL COUNSEL

## MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS	)
	)
Complainant	)
	)
v.	) Administrative Action No. 03-MSRC-002
	)
	)
FRANK G. HEAD, GARY DEMPSEY,	)
MARK ENGLER, JASON OWEN,	)
TIMOTHY SHELTON & NICHOLAS DAY	)
	)
Respondents	)
	)

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**SETTLEMENT AGREEMENT BETWEEN KDMM & NICHOLAS DAY**

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Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”) and Respondent Nicholas Day (“Day”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him and the cancellation of the hearing scheduled for May 8, 2003, Day hereby admits violating KRS 352.201 (1) - as set forth in paragraph 17 of the Complaint herein - and agrees to the **PROBATION OF HIS COAL MINER’S CERTIFICATE (#\*\*\*-\*\*-\*\*\*\*) FOR A PERIOD OF TEN (10) DAYS**, said penalty effective upon the signing of this Settlement Agreement by both parties.

During said period of probation, Day must comply with all state and federal mine safety laws. If Day commits any intentional violation of a state or federal mine safety law during the probationary period, KDMM may file a motion with the Mine Safety Review Commission to

revoke Day's coal miner's certificate for a period of no more than one (1) year.<sup>1</sup> In that event, Day would be entitled to a hearing before the Commission on the allegations against him.

Day further agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Day acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

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NICHOLAS DAY  
\*\*\*\*\*  
Clay, Kentucky \*\*\*\*\*

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FRANK X. DELZER, Commissioner  
Kentucky Dept. of Mines & Minerals  
P.O. Box 2244  
Frankfort, Kentucky 40602

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DATE

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DATE

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<sup>1</sup> If the circumstances warranted, KDMM would also retain the right to file a separate disciplinary action with the Commission seeking other penalties against the Respondent for his conduct.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Settlement Agreement Between KDMM & Nicholas Day was mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2003, to: Frank G. Head, \*\*\*\*\*; Henderson, Kentucky \*\*\*\*\*; Gary Dempsey, \*\*\*\*\*; Sturgis, Kentucky \*\*\*\*\*; Mark Engler, \*\*\*\*\*; Fredonia, Kentucky \*\*\*\*\*; William K. Siler, Attorney-at-Law, P.O. Box 255, Sturgis, Kentucky 42459; Jason Owen, \*\*\*\*\*; \*\*\*\*\*; Cave In Rock, Illinois \*\*\*\*\*; Timothy Shelton, \*\*\*\*\*; Nebo, Kentucky \*\*\*\*\*; and Nicholas Day, \*\*\*\*\*; Clay, Kentucky \*\*\*\*\*.

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TONY OPPEGARD  
General Counsel  
KENTUCKY DEPT. OF MINES & MINERALS